

STATE OF MICHIGAN
COURT OF APPEALS

LAURA GEORGE and DAVID GEORGE,

Plaintiffs-Appellants,

v

DUNCAN ENTERPRISES, INC.,

Defendant-Third Party Plaintiff-
Appellee,

and

TARA THOMPSON,

Third Party Defendant.

UNPUBLISHED

November 20, 1998

No. 205290

Kent Circuit Court

LC No. 96-000618 NP

Before: Whitbeck, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except with regard to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Moore v First Security Casualty Co*, 224 Mich App 370, 375; 568 NW2d 841 (1997).

Plaintiffs first argue that the trial court erred in finding that the kiln was a simple tool. We disagree. In *Viscogliosi v Montgonery Elevator Co*, 208 Mich App 188, 189; 526 NW2d 599 (1994), this Court adopted the two alternative tests set forth in *Raines v Colt Industries, Inc*, 757 F Supp 819 (ED Mich, 1991) for determining whether a tool is simple. Products are characterized as

simple when one or both of the following conditions exists: (1) the products are not highly mechanized, thus allowing the users to maintain control over the products; and (2) the intended use of the products does not place users in obviously dangerous positions. *Id.* at 825. For purposes of this case, the kiln is a large container with an attached lid. Because it is not highly mechanized and its intended use does not endanger the users, the kiln constitutes a simple tool. See *id.*

Plaintiffs contend that the kiln cannot be a simple tool because the accompanying owner's manual contains twenty-five pages of detailed instructions and warnings. However, in a case involving complex machinery, the appropriate focus is on how the product in question is used, rather than its mechanical parts. *Viscogliosi, supra*. Thus, in *Viscogliosi*, this Court found that a moving walkway was a simple tool because, when used as intended, it did not endanger its users. See *id.* Likewise, in the present case, when the kiln's lid is raised or lowered in the course of normal use, the users are not endangered.

Next, plaintiffs argue that the trial court erred in finding that the risk of injury resulting from the sudden and unexpected descent of the lid was open and obvious as a matter of law. Again, we disagree. An objective, reasonable person looking at the kiln would conclude that it was open and obvious that, should the supporting chains or the lid itself be bumped, the lid was likely to fall. See *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 396-397; 491 NW2d 208 (1992); *Mallard v Hoffinger Industries, Inc (On Remand)*, 222 Mich App 137, 142-144; 564 NW2d 74 (1997). Accordingly, defendant had no duty to protect or warn against the danger, and the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ William C. Whitbeck

/s/ Mark J. Cavanagh

/s/ Janet T. Neff